IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 494 of 2001

Manik J. Maity & Anr. .. Appellants

versus

Municipal Corp. of Gr.Bombay

and ors. .. Respondents

...

Mr.G.V. Pandya for the appellants

Mrs.Geeta Jogalekar for BMC.

CORAM : D.G. KARNIK, J

DATED : 21st December 2006

P.C.:

1. Heard counsel for the parties.

2. This appeal is directed against the order dated 11th June 2001 passed by the learned Judge of the City

Civil Court declining to grant ad-interim relief.

3. The respondent municipal corporation issued a notice under section 394(4) of the Mumbai Municipal Corporation Act. The appellant filed a suit bearing L.C. Suit no. 3098 of 2001 challenging the said notice and prayed for an injunction restraining the municipal corporation from demolishing the loft in the premises. The appellant also took out a motion for the relief of interim injunction pending the hearing and disposal of the suit. The trial court was of the view that prima facie case for grant of ad-interim injunction was not made out on the basis of the material which was produced before it at that stage. He therefore declined to grant ad-interim relief but made the motion returnable on 15th July 2001. That order is impugned i this appeal.

4. I am informed at the bar that the suit no.3098 of 2001 from the interlocutory order in which present appeal arises was dismissed in default on 31st January 2001. As the suit itself was dismissed in default, the motion for interim relief pending the decision of the suit became infructuous and stood disposed of along with the suit. In my view therefore, the present appeal is not maintainable and has become infructuous.

5. Learned counsel for the appellant however submits that the suit has since been restored. If so it is open for the appellant to move the trial court by a separate motion for an interim relief. No useful purpose would be served after lapse of more than 5 1/2 years to consider whether the appellant was entitled to an ad-interim injunction at that stage. With these observations, the appeal is disposed of.

(D.G. KARNIK, J)